



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on April 4, 2008

NOTICE OF ACTION TAKEN -- DOCKET DOT-OST-2007-0029

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **ARIK AIR LIMITED**

Date Filed: October 29, 2007

Relief requested: Exemption from 49 USC §41301 to permit the applicant to engage in scheduled foreign air transportation of persons, property, and mail between Lagos, Nigeria, and a specified U.S. point, using aircraft wet leased from an appropriately qualified U.S. or foreign air carrier.¹

Applicant representative: Edward Faberman, 202-719-7402 DOT analyst: George Wellington, 202-366-2391

Responsive pleadings: None.

DISPOSITION

Action: Approved, subject to conditions (see below).

Action date: April 4, 2008

Effective dates of authority granted: April 4, 2008, through April 4, 2010.

Basis for approval (bilateral agreement/reciprocity): United States-Nigeria Air Transport Agreement.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of our standard exemption conditions (attached).

Special conditions/Remarks: We found that the applicant is operationally and financially qualified to conduct its proposed operations, and is substantially owned and effectively controlled by citizens of its homeland.² We also note that the applicant is properly licensed by its homeland to perform the proposed services. In the conduct of the authorized services, the applicant may only use aircraft wet leased from a duly authorized and properly supervised U.S. or foreign air carrier.

Action taken by: Paul L. Gretch, Director, Office of International Aviation

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; and (3) grant of the authority was consistent with the public interest.³ To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

¹ On October 29, 2007, the applicant filed in this Docket a motion under the provisions of 14 CFR §302.12 requesting confidential treatment of the details of its financial projections and future business plans, as well as of the specific U.S. point it proposed to serve. No answers were filed to Arik's motion. Good cause having been shown, we will grant this request.

² The record indicates that all of Arik's stock is held by citizens of Nigeria.

³ The applicant states that the introduction of its services will result in a near-term annual change in fuel consumption exceeding 10 million gallons. Under the provisions of the Energy Policy and Conservation Act of 1975 and 14 CFR Part 313 of our rules, we have considered the matter of Arik's anticipated fuel consumption along with the other public interest factors we consider in taking action in a proceeding of this kind. We find, in the circumstances presented, that in view of our obligations under 49 U.S.C. 40105 to act consistently with international agreements (in this case, the U.S.-Nigeria Air Transport Agreement), and the public benefits that will be derived from Arik's services, approval of the request notwithstanding the anticipated level of fuel consumption is warranted.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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Foreign Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Industry Representative (IIR (formerly referred to as International Principal Security Inspector) to advise the IIR of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.